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ALEXANDER L. STEVAS
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No. 82-875

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

THE IRISH PEOPLE, INC.,

Petitioner,

—v.—

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY MEMORANDUM IN SUPPORT OF THE PETITION FOR CERTIORARI

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January 6, 1983

TABLE OF AUTHORITIES

Cases: Page

Abney v. United States, 431 U.S. 651 (1977).....3

Beacon Theatres v. Westover, 359 U.S. 500 (1959).....3

Bolling v. Sharpe, 347 U.S. 497 (1954).....3

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).....3

Doran v. Salem Inn, Inc., 422 U.S. 922 (1975).....2

Insurance Co. of Ireland v. Companie des Bauxite de Guinea, ___ U.S. ___, 72 L.Ed.2d 492 (1892)..4

Kulko v. Superior Court, 436 U.S. 84 (1978).....3

Land v. Dollar, 330 U.S. 731 (1947)....1

New Orleans v. Dukes, 427 U.S. 297 (1976).....2

Rush v. Savchuk, 444 U.S. 320 (1980)...3

Shaffer v. Heitner, 433 U.S. 168 (1977).....3

Stafford v. Briggs, 444 U.S. 527 (1980).....4

The Conqueror, 166 U.S. 110 (1897).....2

United States v. General Motors Corp., 323 U.S. 733 (1945).....2

Page

World Wide Volkswagen v. Woodson,
444 U.S. 286 (1981).....3

Statutes:

28 U.S.C. § 1254(1).....1, 2

28 U.S.C. § 1254(2).....2

28 U.S.C. § 1257.....2, 3

REPLY MEMORANDUM IN SUPPORT OF THE PETITION FOR CERTIORARI

Respondent's opposition to the petition for certiorari addresses none of the arguments petitioner has presented. Instead, the Solicitor General suggests that the petition should be denied because petitioner's contentions that the district court lacked jurisdiction "are not presently ripe for review." The Solicitor General's position is as devoid of merit as it is devoid of citation to applicable authority -- i.e., entirely -- and can only represent an attempt to avoid review of an indefensible judgment.

The Solicitor General cannot mean that this Court lacks power under 28 U.S.C. § 1254(1) to review this case by writ of certiorari, since it was properly "in the courts of appeals."[1/]

1/ See, e.g., Land v. Dollar, 330 U.S. 731, 734 n.2 (1947); United States v.
(footnote continued on following page)

Nor is his suggestion any sounder if he is urging that denial of a motion to dismiss for lack of in personam jurisdiction is not ripe for review as a matter of discretion, under what is thought to be the Court's preference for reviewing final judgments even under § 1254(1).[2/] In the last five years alone, this Court has reviewed four cases in precisely the same procedural posture as this case, i.e., denial below of a motion to dismiss for lack of in personam

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(footnote continued from preceding page) General Motors Corp., 323 U.S. 373, 377 (1945); The Conqueror, 166 U.S. 110, 113 (1897).

2/ But see Doran v. Salem Inn, Inc., 422 U.S. 922, 927 (1975) (finality doubtfully a requirement under § 1254(2) but no requirement under § 1254(1)); cf. New Orleans v. Dukes, 427 U.S. 297, 301-02 (1976) (questioning the "continuing vitality" of a "finality" requirement under § 1254(2)" which unlike such jurisdictional statutes as 28 U.S.C. § 1257 and § 1291 has no 'finality' provision in the statute itself.")

jurisdiction. Shaffer v. Heitner, 433 U.S. 168, 195 n.2 (1977); Kulko v. Superior Court, 436 U.S. 84 (1978); World Wide Volkswagen v. Woodson, 444 U.S. 286 (1981); Rush v. Savchuk, 444 U.S. 320 (1980). Since those four cases arose out of state courts, and in holding them reviewable this Court was therefore obliged to find the derees denying motions to dismiss "final" under 28 U.S.C. § 1257(1), the ripeness of the judgment below for review follows a fortiorari.[3/] See also Insurance Co.

3/ See also Beacon Theatres v. Westover, 359 U.S. 500 (1959)(jury trial); Abney v. United States, 431 U.S. 651 (1977)(double jeopardy); Bolling v. Sharpe, 347 U.S. 497 (1954)(before judgment in the Court of Appeals); Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)(statutory rights). We are constrained to note that respondent's failure to cite any of the recent, controlling cases on the sole issue he presents -- the ripeness for review of a denial of a motion to dismiss for lack of in personam jurisdiction -- or indeed to cite these related
(footnote continued on following page)

of Ireland v. Companie des Bauxite de Guinea, ___ U.S. ___, 72 L.Ed.2d 492 (1982)(nonfinal decree upholding jurisdiction reviewed under § 1254).

Perhaps the most striking feature of respondent's opposition to certiorari is not, however, that it is unsupported by any authority or contradicted by all applicable authority; it is rather that it is directly contrary to the position respondent urged (successfully) only three terms ago, in Stafford v. Briggs, 444 U.S. 527 (1980). There, the United States appeared amicus curiae to seek review of two decisions remanding Bivens damage actions for trial on the ground that the district courts lacked personal jursidiction. The government's position there is precisely the position petitioner

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(footnote continued from preceding page) cases or any other authority at all, hardly assists this Court's responsible management of its discretionary docket.

urges here -- save that petitioner here asserts constitutional, not statutory, jurisdictional defects. Such unexplained (and even unnoted) changes of position can do little to deflect the appearance that nothing stands behind the respondent's position here but the mere wish to avoid review and certain reversal.

If petitioner is correct that the decision below violates its right not to be haled into court except where legislatively authorized, and then only within the constraints imposed by the Due Process Clause (and, here, the First Amendment), then compelling it to defend itself in the District of Columbia and to seek review later will mean the loss of its constitutional protection. The substantial time and money which petitioner will be forced to expend for a distant trial are precisely what the Constitution protects it from expend-

ing. Moreover, the government will have been accorded two bites of the same apple -- an entire trial in the District of Columbia, and then, if it prevails and is reversed on the jurisdictional ground on appeal, another in a proper forum. Such oppression, and such unfair advantage, is surely not proper in any case, much less in one involving the First Amendment rights of United States citizens to publish a newspaper free from government supervision and intrusion.

CONCLUSION

A writ of certiorari should be granted to review, and ultimately to reverse, the judgment below.

Respectfully submitted,

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